



**The Comptroller General
of the United States**

Washington, D.C. 20548

Has further

Decision

Matter of: Achievement Products, Inc.

File: B-230659

Date: May 23, 1988

DIGEST

1. General Accounting Office will not question contracting officer's determination that the protester's prices were unreasonable where the determination, a matter of administrative discretion involving the exercise of business judgment, has not been shown to be unreasonable and where bad faith or fraud has not been alleged.

2. No legal basis exists for objection to the preaward survey made on the protester prior to the final determination regarding the acceptability of the protester's bid, where the possibility of award existed.

DECISION

Achievement Products, Inc., protests the rejection of its bid under invitation for bids (IFB) No. DAAG60-87-B-8617, issued by the United States Military Academy for cadet insignia. Achievement contends that the rejection of its bid because its prices were considered unreasonable was improper.

We deny the protest.

The IFB requested prices for six different insignia. Items 0001-0003 called for 13,000 insignia per item. Items 0004-0006 called for 8,000 insignia per item. Three bids were received. The first and second low bids were both rejected as nonresponsive due to their failure to acknowledge receipt of IFB amendment No. 0002, which among other things changed the thickness of the insignia. Achievement submitted the only responsive bid at the unit price of \$.979 for items 0001-0003 and \$1.058 for items 0004-0006. The bid was rejected by the contracting officer pursuant to Federal

042242

Acquisition Regulation (FAR) § 14.404-2(f) after she determined that the prices were unreasonably high in view of the prices received for similar insignia on other procurements during 1987. The IFB was, therefore, canceled and the requirement will be resolicited.

The contracting officer's finding of price unreasonableness was made after a review of the prices received for similar items during 1987. Prices on two contracts for insignia similar to items 0001-0003 ranged from \$.50 to \$.57 per insignia for amounts ranging from 1000 to 5000. Prices on two contracts for items similar to items 0004-0006 ranged from \$.70 to \$.90 per insignia for amounts ranging from 2000 to 5000. On the basis of this review, the contracting officer determined Achievement's prices of \$.979 per insignia bid on items 0001-0003 to be 95.8 to 71.8 percent higher than 1987 award prices and the protester's prices of \$1.058 per insignia bid on items 0004-0006 to be 51.2 to 17.6 percent higher than the 1987 award prices. Further, the contracting officer noted that even allowing for the possibility of inflation or upward market trends, the fact that this procurement involved much larger quantities should have resulted in smaller unit prices than those received under the 1987 contracts.

The protester argues that any price comparison must take into account the prices received from the two other bidders on this procurement. Achievement notes that even though it lowered its prices after receiving amendment No. 0002, this was not because of the changes made in that amendment.

A price reasonableness determination is a matter of administrative discretion involving the exercise of business judgment which our Office will not question unless it is unreasonable or there is a showing of bad faith or fraud. Crown Laundry & Dry Cleaners, Inc., B-224374.2, Jan. 20, 1987, 87-1 CPD ¶ 71. In this regard, a determination concerning price reasonableness may be based upon a comparison with such factors as government estimates, past procurement history, current market conditions, or any other relevant factors. Id.

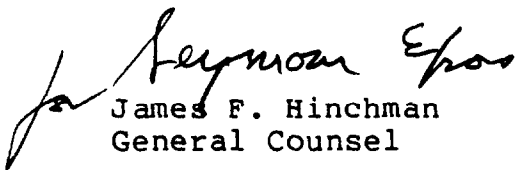
Achievement has not alleged that the contracting officer's determination of price unreasonableness was based on bad faith or fraud. Nor can we conclude that Achievement has shown the determination to be unreasonable. We are not convinced by the protester's position that the prices bid by the other two bidders under the subject solicitation show that its prices were in fact reasonable. While it is true that one firm's bid for items 0004-0006 was close to Achievement's bid for the same items--\$1.05 v. \$1.058--the

other prices bid, \$.75 and \$.89 for items 0001-0003 and \$.70 for items 0004-0006 were significantly lower. Further, despite the protester's argument that it did not reduce its prices because of amendment No. 0002, the agency maintains that if that amendment had been received by the other bidders, it would have also resulted in a reduction of their prices. While there is nothing in the record which shows whether the amendment was actually received by the lower bidders that amendment did allow for thinner insignia, and thus could well have resulted in cost reductions. In any event, the protester has not shown that the price comparison actually made by the agency was in any way flawed or unreasonable. In view of the significant disparity between Achievement's prices and those previously paid for similar items in the recent past, we have no basis upon which to question the agency's price reasonableness determination.

The protester also complains that it was forced to incur the cost and inconvenience of a preaward survey even though its bid was eventually rejected. While it is unfortunate that the protester had to be the subject of a preaward survey prior to the rejection of its bid, we have no basis to object to the agency's action since at the time the survey was conducted there was a possibility that Achievement would receive the award. See Pyrotechnics Industries, Inc., B-221886, June 2, 1986, 86-1 CPD ¶ 505.

Since we have concluded that Achievement's protest has no merit, it is not entitled to recover its bid preparation or protest costs. Bid Protest Regulations, 4 C.F.R. § 21.6(d) (1988); Ship Analytics, Inc., B-225798, June 23, 1987, 87-1 CPD ¶ 621.

The protest is denied.


James F. Hinchman
General Counsel